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NO. 82-401

In the Supreme Court of the United States

OCTOBER TERM, 1982

BAXTER RICE, INDIVIDUALLY, AND AS DIRECTOR OF THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL OF THE STATE OF CALIFORNIA,

PETITIONER,

vs.

EVA REHNER,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

AMICUS CURIAE BRIEF OF THE MESCALERO APACHE TRIBE IN SUPPORT OF RESPONDENT EVA REHNER

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QUESTION PRESENTED

Does 18 U.S.C. Section 1161 or the Twenty-first Amendment to the United States Constitution confer jurisdiction on the State of California to require a tribal member to obtain a state license for the sale of alcoholic beverages on an Indian reservation?

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NO. 82-401

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

BAXTER RICE, Individually, and as Director of the Department of Alcoholic Beverage Control of the State of California,

Petitioner,

vs.

EVA REHNER,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

AMICUS CURIAE BRIEF OF THE MESCALERO APACHE TRIBE IN SUPPORT OF EVA REHNER

SUMMARY OF ARGUMENT

The State of California has argued that 18 U.S.C. 1161 or the Twenty-first Amendment to the United States Constitution explicitly authorizes state regulatory jurisdiction over sales of alcoholic beverages by tribal members on Indian reservations. Neither of these federal provisions contain such authorization. A construction of 18 U.S.C. 1161 which would require state licenses for such activity would frustrate both the anti-discriminatory intent of the statute and federal policy favoring tribal self-determination, and would be contrary to established principles of federal Indian law.

For these reasons, the Mescalero Apache Tribe respectfully submits that the Court should affirm the decision of the Ninth Circuit and deny the State of California authority to require licenses for the sale and distribution of alocholic beverages in Indian country.

INTEREST OF AMICUS CURIAE

This brief is filed with the written consent of all parties.

The Mescalero Apache Tribe is a federally-recognized Indian tribe in the

State of New Mexico. The Mescalero Indian Reservation was first established by a Presidential Executive Order in 1873. The Mescalero Apache Tribe [hereinafter "Tribe"] has a constitutional government organized pursuant to 25 U.S.C. Section 476, and exercises full powers of self-government, subject only to the control surrendered to the United States as trustee.

The Tribe exercised the option granted it by 18 U.S.C. Section 1161 to permit and regulate the licensing, sale and distribution of alcoholic beverages within the Mescalero Apache Reservation, through the adoption of an ordinance published in 30 Fed. Reg. 3553 (March 17, 1965). For a period of ten years thereafter the Tribe owned and operated a tribal bar on the Reservation without a state license, in accordance with a written opinion by the Chief of the New Mexico Division of Liquor Control that an Indian tribe could establish its own liquor operation on reservation land without a state license.

In 1975, with the approval and assistance of the federal government, the Tribe opened a multi-million dollar

resort, the Inn of the Mountain Gods, to be operated for the benefit of the tribal education, social and economic welfare programs on behalf of tribal members. As an integral and essential part of this enterprise, the Tribe began to sell alcoholic beverages at the Inn.

The State of New Mexico then reversed its earlier position and informed the Tribe that a state license would be required for operation of the tribal bar at the Inn of the Mountain Gods. Because of the state "quota" system in effect at that time, and because of state regulations regarding the location and number of licensed outlets, acquisition of a state license for the tribal bar was impossible. The United States, in its own interest and on behalf of the Tribe, brought suit in Federal District Court for a declaratory judgment that the Tribe had sole authority to regulate the licensing of tribal outlets located within the exterior boundaries of the Reservation and for appropriate injunctive relief.

The District Court of the United States for the District of New Mexico granted the relief requested by the United

States. Copies of the Judgment, Findings of Fact and Conclusions of Law of the District Court are submitted as an Appendix to this brief. The State of New Mexico appealed the decision to the Court of Appeals for the Tenth Circuit. The Tenth Circuit affirmed the judgment of the trial court. United States v. New Mexico, 590 F.2d 323 (10th Cir. 1978), cert. denied, 444 U.S. 832 (1979).

The Mescalero Apache Tribe currently operates two tribal liquor outlets, which are regulated solely by tribal and federal authorities. Contrary to the conjectures of the states, the system functions very smoothly in actual practice. As required by 18 U.S.C. Section 1161, the tribally-operated liquor outlets are operated in conformity with all state substantive laws, such as hours of operation and age restrictions. Enforcement of these standards is achieved through tribal and federal action. There has been no increase in "lawlessness", and the Tribe has achieved a measure of control over alcohol-related problems on the Reservation. Liquor laws are enforced by tribal staff and by federal law

officers.

If these outlets could not be operated, the tourism industry on the Reservation would be gravely affected. The multi-million dollar investment in the Inn of the Mountain Gods could be rendered virtually worthless. The imposition of state licensing requirements on tribal enterprises would have a significant adverse effect on the Tribe's economic development and would undermine tribal self-determination. A decision adverse to Mrs. Rehner, by limiting tribal liquor sales, would negate the anti-discriminatory purpose of 18 U.S.C. Section 1161 and would deprive Indian tribes of a degree of control over alcohol-related social problems on the Reservation.

ARGUMENT

Under well-established principles of federal Indian law, state laws do not apply to Indians on Indian reservations unless Congress has expressly authorized state jurisdiction. McClanahan v. Arizona State Tax Commission, 411 U.S. 164, 170-71 (1973). In the absence of an express grant of state jurisdiction, courts have denied state licensing and

taxing power over Indians on reservations. Bryan v. Itasca County, 426 U.S. 373, 376-77 (1976); Moe v. Confederated Salish and Kootenai Tribes, 425 U.S. 463, 480-81 (1976).

All statutes affecting Indian tribes must be construed in light of two long-standing canons of construction. The first requires that any ambiguity be resolved in favor of the Indians. Bryan v. Itasca County, 426 U.S. 373, 392 (1976); DeCoteau v. District County Court, 420 U.S. 425, 444 (1975). Second, all statutes must be viewed against the underlying federal policy of leaving Indians free from state jurisdiction. McClanahan v. Arizona State Tax Commission, 411 U.S. 164, 168 (1973). In light of these general principles, it is clear that neither 18 U.S.C., Section 1161 nor the Twenty-first Amendment to the United States Constitution contain the requisite express grant of jurisdiction.

I. Section 1161 Is Not a Grant of Regulatory Jurisdiction to the States.

Prior to the enactment of 18 U.S.C. Section 1161, jurisdiction over Indian

liquor transactions was exercised exclusively by the federal government through a series of prohibitory laws. See generally, F. Cohen, Handbook of Federal Indian Law, 353 (1942). Until 1953, federal law generally prohibited any introduction, possession or sale of intoxicating liquor in Indian country.

In 1953, the passage of 18 U.S.C. Section 1161 altered the federal position on this subject. Section 1161 reads in full as follows:

> The provisions of Sections 1154, 1156, 3113, 3488 and 3618 of this title shall not apply within any area that is not Indian country, nor to any act or transaction within any area of Indian country provided such act or transaction is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the Tribe having jurisdiction over such area of Indian country, certifed by the Secretary of the Interior, and published in the Federal Register. Added Aug. 15, 1953, a. 502, Section 2, 67 Stat 586.

As agreed by all parties, and as discussed at length in Petitioner's Brief on the Merits, pp. 31-46, the intent of this law was to eliminate discrimination against Indians and Indian tribes by allowing the sale of liquor on reservations. Both the House and Senate Committee Reports clearly indicate that

Congress intended to insure that Indians on reservations have access to liquor under the same terms as non-Indians off the reservation. House Report No. 775, 83d Cong., 1st Sess., p. 1, July 13, 1953; Senate Report No. 722, 83d Cong., 1st Sess., p. 1, July 29, 1953. Section 1161 insured this by giving Indian tribes the right to regulate the sale and usage of alcoholic beverages on their own reservation. In order to harmonize the interests of the states with the legitimate self-government interests of the Indian tribes, the statute requires that liquor sales on the reservation be "in conformity" with state laws. This purpose is clear from a letter from the Assistant Secretary of the Interior to the Director, Bureau of Budgets, dated August 7, 1953, which forms part of the legislative history of 18 U.S.C. Section 1161. The letter states:

> Thus, the bill recognizes the principle of tribal self-government, but requires that it be exercised in a manner consistent with the public policy of the state.

The Department of the Interior has continued to support the view that Section 1161 does not require that an Indian tribe obtain a state license for liquor

transactions on a reservation. Sol. Mem. M-36815, 78 I.D. 39 (February 3, 1971). In the case of the Mescalero Apache Tribe, the United States Department of Justice brought suit to enforce that view. United States v. New Mexico, 590 F.2d 323 (10th Cir. 1978). These constructions of the statute by agencies responsible for executing the statute are entitled to "great respect", Northern Cheyenne Tribe v. Hollowbreast, 425 U.S. 649, 48 L.Ed. 2d 274, 96 S.Ct. 1793 (1976), and such constructions should not be "overruled without cogent and persuasive reasons". La Roque v. United States, 239 U.S. 62 (1915); United States v. Jackson, 280 U.S. 183 (1930).

If Indian tribes are required to obtain state licenses for liquor transactions on the reservation, the anti-discriminatory purpose of Section 1611 could be completely frustrated. In the Mescalero case, the Tenth Circuit recognized that the cost of a state license under the quota system would impose a financial burden upon the Tribe. U.S. v. New Mexico, 590 F.2d 323, 325 (10th Cir. 1978). In addition, geographical and other restrictions on

licenses in effect at that time could have prevented the Tribe from obtaining a license for the Inn of the Mountain Gods at any cost. It is clear that, under the states' view of Section 1611, a state could effectively keep Indian reservations "dry", even where the state itself allows sales of alcoholic beverages. This could occur in any state, but particularly in states with a "quota" system or in so-called "monopoly" states. Thus, under Petitioner's view, the discriminatory prohibition against liquor sales on Indian reservations could be resurrected at a state's option. This would be directly in conflict with the opinion in U.S. v. Mazurie, 419 U.S. 544 (1975), in which the Supreme Court held that by the enactment of Section 1161:

> Congress delegated its authority to control the introduction of alcoholic beverages into Indian country...to entities which possess a certain degree of indpendent authority over matters that affect the internal and social relations of tribal life. (i.e., to tribes).

U.S. v. Mazurie, 419 U.S. at 557. If Section 1611 is construed to require state licenses for reservation liquor sales, that congressional delegation would be rendered virtually meaningless. As stated by the Court in Mazurie, liquor

transactions are "matters that affect the internal and social relations of tribal life". If states which allow liquor sales may effectively decide through licensing whether liquor may be sold on reservations, Indian tribes will be deprived of both their independent authority over internal matters and the authority delegated to them by Congress.

On the Mescalero Apache Reservation, as in most other communities in this country, liquor outlets function to some extent as community gathering places. It would frustrate the anti-discriminatory intent of Congress if, under Section 1611, states could effectively eliminate such tribal liquor outlets.

In recent years, federal policy has fostered Indian autonomy, reservation self-government and economic self-development. Santa Rosa Band of Indians v. Kings County, 532 F.2d 655, 663 (9th Cir. 1975). On the Mescalero Apache Reservation, that policy has been fostered through tribal sales of liquor.

Prior to the opening of the Reservation to sales of liquor, tribal members who purchased liquor did so primarily at two off-reservation bars,

one located 19 miles from the Reservation. Obviously, under those circumstances, most alcohol-related offenses occurred off-reservation, were prosecuted under state jurisdiction, and were outside the control of the Tribe. Since approximately 1967 the Tribe has chosen to sell liquor on the Reservation through tribally-operated outlets. The Tribe has chosen to strictly regulate the sale of liquor in this manner, rather than to rely on state licensing of off-Reservation private enterprise.

The spectre of increased "lawlessness" raised by the states has not occurred on the Mescalero Apache Reservation. Sales of liquor adhere to state substantive standards, and liquor laws are enforced by tribal staff members. The federal government maintains ten law officer positions for the enforcement of federal law, including violations of substantive state standards.

Liquor sales on the Reservation have resulted in increased tribal control over alcohol-related social problems. Because it operates the liquor outlets, the Tribe has access to information regarding liquor consumption on the Reservation. The Tribe

is concerned with alcohol-related social problems, and has established a special tribal committee to investigate the problems and recommend solutions. Because most drinking occurs on the Reservation, offenders are processed through Tribal Court. The Tribal Court routinely refers offenders to the Tribal Alcoholism Treatment Program. This is a program operated with federal funds and with tribal support in the form of contributions of buildings, vehicles, furnishings, equipment and administrative services. The Tribal Court is in the process of establishing a school for members convicted of driving while intoxicated.

This vital tribal control over matters directly affecting tribal members could be vitiated by a scheme which allowed the State to curtail or eliminate liquor sales on the Reservation. Furthermore, the Tribe's economy is largely dependent on tourism, and would be devastated by elimination of liquor sales on the Reservation.

The interest in tribal self-control expressly protected by the language of Section 1611 would be damaged by state

entry on the Reservation to enforce its licensing requirements. Such an intrusive exercise of state jurisdiction, in a field totally preempted by federal and tribal regulation, could only be justified by an express congressional grant of jurisdiction. Bryan v. Itasca County, 426 U.S. 164 (1973). Section 1611 simply cannot be read to provide such a grant.

The State's interest in uniformity, on the other hand, is adequately protected by the requirement that state substantive laws be followed.

It is surely surprising that the State of California would argue that its citizens are somehow damaged or subject to discrimination through application of its own state laws. Petitioner's Brief on the Merits, pp. 31-37. Systems of law are generally considered to be enacted for the benefit and protection of citizens. If Indians are indeed placed in "a position superior to that of non-Indians", perhaps the State of California should consider a review of its own jurisprudence.

The State's arguments regarding the substantive/procedural distinction are without foundation. This argument was

also made in the Mescalero case and was rejected. The Tenth Circuit treated the issue as one concerning "regulatory powers in Indian Country or on Indian lands" and therefore requiring an express congressional grant for the state jurisdiction to exist. United States v. New Mexico, 590 F.2d 323, 328 (10th Cir. 1978). Whatever may be the rule in regard to other state laws, the requirement of a state license is clearly regulatory.

The view that Section 1611 merely incorporates state standards is consistent with the general scheme of law enforcement in Indian country, as established in federal law. Act of June 25, 1948, 62 Stat. 686, codified at 18 U.S.C. Section 13; Act of June 25, 1948, 62 Stat. 758, codified at 18 U.S.C. Section 1154.

II. The Twenty-first Amendment To The United States Constitution Does Not Authorize State Regulatory Jurisdiction Over Liquor Sales On Indian Reservations.

In the Mescalero case the State of New Mexico also raised the argument that the Twenty-first Amendment authorized the State to regulate liquor licensing

on Indian reservations. The Tenth Circuit summarily disposed of the argument. United States v. New Mexico, 590 F.2d 323, 329 (10th Cir. 1978). This was entirely appropriate in view of settled law on the issue. As stated by the Supreme Court in Collins v. Yosemite Park and C. Co., 304 U.S. 518, 82 L. Ed. 1502 (1938), in dealing with the same issue:

> The lower court was of the opinion that though the Amendment may have increased the State's power to deal with the problem..., it did not increase its jurisdiction. With this conclusion, we agree. As territorial jurisdiction over the Park was in the United States, the State could not legislate for the area merely on account of the XXI Amendment.

The case of the United States v. Mississippi Tax Commission, 412 U.S. 363 (1973), 421 U.S. 599, 95 S.Ct. 1972 (1975), reaffirms the proposition that, while the Twenty-first Amendment may have given states greater authority over the subject matter of alcoholic beverages, it does not expand its territorial jurisdiction in any way.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision of the Court of Appeals for the Ninth Circuit, which denied the State of

California the authority to require that a tribal member selling alcoholic beverages on a reservation obtain a state license, should be affirmed.

RESPECTFULLY SUBMITTED,

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APPENDIX

IN THE DISTRICT COURT
OF THE UNITED STATES

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA

Plaintiff

vs

STATE OF NEW MEXICO and
CARLOS L. JARAMILLO, Director
Department of Alcoholic
Beverage Control

Defendants

J U D G M E N T

The United States of America has requested this Court to render a declaratory judgment that the Mescalero Apache Tribe has sole authority to regulate the licensing of tribal outlets located within the exterior boundaries of the Mescalero Apache Reservation and to regulate the sale of alcoholic beverages by these outlets. The Court has also been requested to grant appropriate injunctive relief. The Court having considered the stipulated facts submitted by the parties, the court record of the hearing on the preliminary injunction, and the legal

arguments and briefs of the parties, and having made its findings of fact and conclusions of law;

IT IS THE JUDGMENT OF THIS COURT that as between the State of New Mexico and the Mescalero Apache Tribe, 18 U.S.C. 1161 delegates to the Mescalero Apache Tribe the sole authority to regulate the licensing of tribally operated outlets within the exterior boundaries of its reservation and to regulate the sale of alcoholic beverages by those outlets. Therefore, the Mescalero Apache Tribe need not comply with any state liquor licen.e requirements, nor may any officer or agents of the State of New Mexico enter upon the Mescalero Apache Reservation to enforce state laws concerning licensing and regulation of liquor sales against the liquor outlets owned by the Mescalero Apache Tribe within the outer boundaries of the Reservation, nor may they take any action against wholesale suppliers that would result in the cessation of liquor sales within the Reservation at tribally operated outlets.

IT IS FURTHER ORDERED that

defendants and all those persons acting under their control or in concert with them are permanently enjoined from taking any action against the Mescalero Apache Tribe or its suppliers that would result in the cessation of liquor sales by the Tribe at any tribal owned outlet within the outer boundaries of the reservation; and defendants and all those persons acting under their control or in concert with them are permanently enjoined from ordering state law enforcement personnel to enforce state laws concerning licensing and regulation of liquor sales against the liquor outlets owned by the Mescalero Apache Tribe within the outer boundaries of the Reservation.

_____

UNITED STATES DISTRICT JUDGE

IN THE DISTRICT COURT
OF THE UNITED STATES

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA Plaintiff vs STATE OF NEW MEXICO and CARLOS L. JARAMILLO, Director Department of Alcoholic Beverage Control Defendants	)

COURT'S FINDINGS OF FACT
AND CONCLUSIONS OF LAW

The following shall constitute the Findings of Fact and Conclusions of Law of the Court:

FINDINGS OF FACT

1. The Mescalero Apache Tribe was recognized by the United States Government in the Treaty of July 1, 1852, 10 Stat. 979 between the United States and representatives of the Mescalero Apache Nation.

2. Article 1 of this Treaty places the Mescalero Apache Nation "exclusively under the laws, jurisdiction and government of the United States of America".

3. The Mescalero Apache Indian Reservation was created by a series

of eight executive orders dating from May 23, 1873, to February 17, 1912. Substantially all of the lands within the present outer boundaries of the reservation are held in trust by the United States for the Mescalero Apache Tribe.

4. The Mescalero Apache Tribe has a constitutional government organized pursuant to 25 U.S.C. Section 476, and the government exercises full traditional powers of tribal self-government over the entire Reservation excepting the control surrendered to the United States as trustee.

5. The Mescalero Apache Tribe has adopted an Ordinance published in 30 Fed. Reg. 3553 (March 17, 1965) pertaining to the sale and consumption of alcoholic beverages within the exterior boundaries of the Mescalero Apache Reservation.

6. 18 U.S.C. Section 1161 makes the Federal Indian Liquor Laws inapplicable to:

> "...any act or transaction within any area of Indian country provided such act or transaction is in conformity both with the laws of the state in which such act or transaction occurs, and with an ordinance duly adopted by the tribe having jurisdiction over such area

of Indian country, certified by the Secretary of the Interior, and published in the Federal Register".

7. The Mescalero Apache Tribe has owned and operated a tribal bar in the community of Mescalero for a period of ten (10) years without a state license to do so.

8. On April 2, 1965, Mr. H. E. Babcock, Jr., as Chief of the New Mexico Division of Liquor Control stated in a letter to the Mescalero Apache Tribe's Counsel that an Indian tribe could establish its own liquor operation on reservation land without coming under the Liquor Division's control.

9. Alcoholic beverages are presently being sold at the Inn of the Mountain Gods resort complex and the tribal bar at Mescalero without a state license, without a tribal license and without any other type of license authorizing liquor sales.

10. Under the Ordinance referred to in paragraph 5 above, the Mescalero Apache Tribe is not required to obtain a liquor license in order to sell intoxicating beverages within the exterior boundaries of the Reservation.

11. Alcoholic beverages have been

sold at the Inn of the Mountain Gods since July, 1975.

12. The Inn of the Mountain Gods, the tribal bar located in the Village of Mescalero, and the New Mexico licensed bar owned by the Tribe at Apache Summit are all located within the exterior boundaries of the Mescalero Apache Reservation.

13. The enterprise at the Inn of the Mountain Gods which is owned and operated by the Mescalero Apache Tribe was constructed and opened after a feasibility study was made by the Bureau of Indian Affiars.

14. The revenue from the Inn of the Mountain Gods is being used and will continue to be used for the education, social and economic welfare and governmental needs of the Mescalero Apache people.

15. The Inn of the Mountain Gods enterprise is owned and operated by the Tribe according to tribal authority granted under Article XI of the Mescalero Apache Tribal Constitution.

16. Plans and specifications for the construction of the Inn of the Mountain Gods were approved by the

Federal Government.

17. The approval of the Bureau of Indian Affiars is required for the budget for each fiscal year for operation of the Inn of the Mountain Gods.

18. The Mescalero Apache Tribe maintains a full staff of eight persons available to enforce tribal ordinances who are not commissioned New Mexico peace officers.

19. The Federal Government has six full-time and two part-time (averaging a total of forty hours per week) officers on the Mescalero Apache Reservation for enforcement of Federal Law who are not commissioned New Mexico peace officers.

20. Because of state quota restrictions, it would cost in excess of $50,000.00 to purchase a license for use at the Inn of the Mountain Gods, and this would constitute a financial burden on the Mescalero Apache Tribe.

21. The State of New Mexico has never taken steps under 25 U.S.C. Sections 1321 and 1322 or Public Law 280 to assume civil or criminal jurisdiction over the Mescalero Apache

Reservation and could not now do so without the consent of the Mescalero Apache Tribe.

22. The State of New Mexico has in the past ordered all wholesalers in the State of New Mexico to cease delivery to the Tribal bars and has threatened to do so in the future.

23. The State of New Mexico has threatened to send its law enforcement personnel into the Mescalero Reservation to enforce state laws concerning the licensing and regulation of liquor sales.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and subject matter of this lawsuit.

2. The Mescalero Apache Tribe is a tribe of Indians duly recognized by the Federal Government and said tribe has jurisdiction over the territory of the Mescalero Apache Reservation.

3. The Mescalero Apache Tribe has exercised the option granted it by 18 U.S.C. 1161 to regulate the licensing, sale and distribution of alcoholic beverages within the Mescalero Apache Reservation.

4. 18 U.S.C. 1161 does not require the Mescalero Apache Tribe to meet any state licensing requirements to operate tribal-owned liquor outlets.

5. 18 U.S.C. 1161 does not grant the State of New Mexico jurisdiction to enforce any of its liquor laws within the exterior boundaries of the Mescalero Apache Reservation.

6. The State of New Mexico may not forbid wholesale suppliers of the Mescalero Apache Tribe from selling to tribal-owned outlets.

7. As between the Mescalero Apache Tribe and the State of New Mexico, the Mescalero Apache Tribe has sole jurisdiction for regulating the licensing, sale, possession and distribution of alcoholic beverages at tribal-owned outlets within the exterior boundaries of the Mescalero Apache Reservation.

8. The 21st Amendment to the United States Constitution does not give the State of New Mexico jurisdiction to enforce any of its liquor laws within the exterior boundaries of the Mescalero Apache Reservation.

9. The federal government and the Mescalero Apache Tribe have preempted the State of New Mexico from any jurisdiction it might arguably have had to regulate the licensing of tribal-owned liquor outlets and to regulate the sale of alcoholic beverages at such outlets within the exterior boundaries of the Mescalero Apache Reservation.

10. 18 U.S.C. 1161 was designed to further Tribal self-government and imposition of the State's licensing regulations against the Mescalero Apache Tribe or enforcement of state liquor law by the state within the Mescalero Apache Reservation would be an unwarranted interference with tribal self-government.

11. Plaintiff is entitled to a permanent injunction to enjoin the State and its officers and agents from entering upon the Mescalero Apache Reservation to enforce state laws concerning licensing and regulation of liquor sales against the liquor outlets owned by the Mescalero Apache Tribe within the outer boundaries of the Reservation, and further enjoining them from prohibiting wholesalers from

selling to tribal-owned outlets.

12. Article I, Section 8, Clause 3 of the United States Constitution gives the sole authority to the Congress of the United States to regulate commerce with the Indian tribes.

Any requested Findings of Fact and Conclusions of Law not included herein are hereby denied.

_____

UNITED STATES DISTRICT JUDGE